

# Very Short-Answer Questions

Q.1. What is the object behind the enacting Arbitration and Conciliation Act, 1996?

Ans. The object behind enacting this Act is to adopt the provisions of United Nations Commission on International Trade Law, (Model Law) so as to bring Indian Law in tune with the prevailing law of international arbitration. •

Q. 2. What do you mean by "Arbitration"?

Ans. An arbitration is a reference to the decision of one or more persons, either with or without umpire, of some matter or matters in difference with the parties. According to S. 2 (a) , "Arbitration" means any arbitration whether or not administered by permanent arbitral institution. •

Q. 3. What are the kinds of Arbitration?

Ans: Kinds of Arbitration are : (a) Ad hoc Arbitration, (b) Contractual Arbitration, (c) Institutional Arbitration, and (d) Statutory Arbitration. •

Q. 4. What do you mean by Ad-hoc Arbitration?

Ans. Meaning of Ad hoc Arbitration : This type of arbitration is sought when a dispute between the parties arises during the course of business transaction, which could not be settled through mediation or conciliation. As the name suggests, this type of arbitration is a temporary arrangement for the settlement of the dispute. •

Q. 5. What do you mean by Institutional Arbitration?

Ans. Institutional Arbitration : Under institutional arbitration, the parties agree in advance that in the event of future disputes or differences during the course of their commercial transactions, the matter will be referred for the settlement by arbitration of the named institution of which one or more parties are the members. Such institutions have their own published rules and they appoint arbitrators from amongst the panel of experts of the concerned profession after obtaining consent of the parties. •

Q. 6. What do you mean by Statutory Arbitration?

Ans. Meaning of Statutory Arbitration : Where an arbitration is statutorily imposed by the State on the parties to a commercial transaction, the parties have no option than to abide by that arbitration. Statutory arbitration differs from the above three types of arbitration, as there is no question of giving consent in the case of statutory arbitration. •

Q. '7. What do you mean by the Arbitration Agreement ?

Ans. According to S. 2 (a) of Arbitration Act, 1940 "Arbitration Agreement" means a written agreement to submit present or future difference to arbitration, whether an arbitrator is named therein or not . •

Q. 8. What are the essentials of an Arbitration Agreement ?

Ans. The essentials of an Arbitration agreement are : (i) An agreement to which the parties must be ad idem. (ii) The agreement must be in writing. (iii) The agreement must be to refer a present or future difference to arbitration, whether an arbitrator is named in the agreement or not. •

Q. 9. What do you mean by Arbitration Award ?

Ans. Arbitration Award: S. 2(1) (c) provides that 'Arbitration Award' includes an interim award. This provision is in consonance with the provision of S. 2(b) of the Arbitration Act, 1940, which defines that an award means an "Arbitration Award" . •

Q. 10. What are the essentials of an Arbitration Award? Ans. (i) There must be a matter in controversy; (ii) There must be a submission by the parties; (iii) There must be parties to that submission; (iv) The arbitrations must have been appointed; and (v) There must be delivery of award by the arbitrators. •

Q. 11. What are the kinds of Award?

Ans. Kinds of Award:—An arbitral award may be either a "final award" or an "interim award". It may be a domestic award or a foreign award. An arbitral award must be in writing and must be duly signed by the arbitrator. •

Q. 12. What do you mean by "Foreign Award? Ans. Meaning of Foreign Awards:— The foreign awards are enforceable under the New York Convention and the Geneva Convention, as has been described U/Ss. 49 and 58 of the Arbitration and Conciliation Act, 1996 .•

Q. 13. What do you mean by Arbitral Tribunal?

Ans. Meaning of Arbitral Tribunal:—According to S. 2(1)(d) of the Arbitration and Conciliation Act, 1996, "arbitral tribunal" means a sole arbitrator or a panel of arbitrators. •

Q. 14. What do you mean by "Court"?

Ans. Meaning of "Court":—S. 2(1) (e) provides that "Court" means the Principal Civil Court of original jurisdiction in a District, and includes the High Court in exercise of its original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of small causes. •

Q. 15. What do you mean by Legal Representative? Ans. Meaning of Legal Representative:—According to S. 2(1) (g) the expression, "legal representative" means a person who represents the estate of the deceased person and includes any person who intermeddles with the estate of the deceased and where a party acts in a representative character the person on whom the estate devolves on the death of the 'party so acting . •

Q. 16. What do you mean by Domestic Award?

Ans. Meaning of Domestic Award:—Sub-Section (7) of S. 2 lays down that an award made under Part 1 of the Arbitration and Conciliation Act, 1996, shall be called a domestic award . Sub-Section (2) provides that Part I shall apply where the place of arbitration is in India. Reading these two Sub-Sections together it is evident that where the place of arbitration is in India, an award given either in domestic arbitration or in international commercial arbitration shall be considered as a domestic arbitration. •

Q. 17. What is the nature of Arbitration?

Ans. Nature of Arbitration : The arbitration clause is a part of the contract. It is an agreement which is collateral to the main contract. It continues till the contract persists. •

Q. 18. What do you mean by waiver by estoppel?

Ans. Meaning of Waiver by Estoppel : It means that the concerned person denies to himself the right to raise objection due to silence, tacit consent or conduct in the arbitration proceedings. For Example, a party is estopped from objecting

to an award on the ground that the arbitrator whom the party himself had appointed, was not properly qualified to act as an arbitrator. •

Q. 19. What are the number of arbitrators?

Ans. Number of Arbitrators : According to S. 10 (1), the parties are free to determine the number of arbitrators provided that such number shall not be an even number. (2) Failing the determination referred to in sub-section (1), the Arbitral Tribunal shall consist of a sole arbitrator. •

Q. 20. What are the grounds for challenging the jurisdiction of an arbitrator?

Ans. S. 12 (3) provides that an arbitrator may be challenged "only" if the circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or that he does not possess the qualifications agreed to by the parties. The use of the word "only" in this sub-section means that he cannot be challenged on other grounds than those mentioned U/Sub. S. (1). S. 12 (4) provides that a party may challenge an arbitrator appointed by him or in whose appointment he has participated, only for other reasons of which he becomes aware after the appointment has been made. •

Q. 21. Whether Arbitral Tribunal is competent to rule on its jurisdiction?

Ans. Yes. S. 16 (1) provides power on the arbitral tribunal to rule on its own jurisdiction including any objections with respect to the existence or the validity of the arbitration agreement subject to ultimate court control U/S. 34 of the Act. Sub-Section (1) enshrines the principle that an arbitration clause in a contract, shall be treated as an agreement "independent of the other terms of the contract" and that, as a consequence, a decision by the arbitral tribunal that the contract is null and void, shall not entail ipso jure the invalidity of the arbitration clause. S. 16 (2) provides that a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. However, a party shall not be precluded from raising such a jurisdictional plea merely because that he has appointed or participated in the appointment of an arbitrator. •

Q. 22. For what purposes the interim measures be ordered by Arbitral Tribunal?

Ans. S. 17 (1) says that unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. S. 17 (2) says that the arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered U/Sub-Sec. (1). The general purpose of the provisions of S. 17 is to prevent or minimize any disadvantage to a party, which may arise on account of the duration of the arbitral proceedings, until the final settlement of the dispute. •

Q. 23. What procedure is to be followed by the arbitral tribunal?

Ans. S. 18 provides definite obligations on the arbitral tribunal to i.e., treat all the parties with equality and to give an opportunity to each party to present his case. The arbitral tribunals are supposed to observe the principles of natural justice. U/S. 34 it has been provided that in case the arbitral tribunals fail to observe these principles, they may be set aside by the Courts. In this way, the arbitral tribunals are supposed to perform their functions honestly and impartially. •

Q. 24. What are the powers of the arbitral tribunal regarding the determination of the rules of procedure?

Ans. According to S. 19(1), 'he arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. (2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings. (3) Failing any agreement referred to in Ss. (2), the arbitral tribunal may, subject

to this Part, conduct the proceedings in the manner it considers appropriate. (4) The power of the arbitral tribunal U/Sub-Sec. 3 includes the power to determine the admissibility, relevance, materiality and weight of any evidence. •

Q. 25. What do you mean by the Court assistance in taking evidence?

Ans. S. 27 provides for Court assistance in taking evidence with the object of facilitating efficient conduct of arbitration. S. 27(1) provides that an application can be made to the court for such assistance either by the arbitral tribunal or by a party with the approval of the tribunal. The approval of tribunal is necessary to avoid the abuse of the arbitral process. U/S. 27(3), the court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be produced directly to the arbitral tribunal. U/S. 27(4), the Court while making orders, may issue the same processes to witnesses as it may issue in suits tried before it. •

Q. 26. When is the recording of evidence by court necessary?

Ans. The recording of evidence by the Court can be availed of in arbitral proceedings when : (i) the arbitral tribunal desires so; or (ii) a party wishes so and the request is acceded to by the arbitral tribunal.

Q. 27. What do you mean by "Settlements"?

Ans. S. 30(1) gives authority to the arbitral tribunal to encourage the parties for settlement of their dispute through mediation, conciliation or other procedures at any time during the arbitral proceedings. If the arbitral tribunal is authorised by the parties, the tribunal may use different procedures of alternative dispute resolution, such as mediation and conciliation during arbitral proceedings. S. 30(2) provides that in case the parties settle the dispute during arbitral proceedings, the arbitral tribunal shall terminate the proceedings and if requested by the parties and not objected by the arbitral tribunal, shall record the settlement in the form of an arbitral award on agreed terms. •

Q. 28. How is an award made?

Ans. The Calcutta High Court has held that an award is made when it is written and signed. An award is not made in law till it is made known to the parties or at least till some step is taken with regard to it which makes it impossible for the arbitrator to make any alteration therein, whether by communicating the contents of the award to the parties or filing in court or in some other way. •

Q. 29. Whether making and publishing of award is essential?

Ans. It has been held that it is only where the submission provides for the making and publishing of the award that the award is not valid unless it is published. Where, therefore, there is no such provision in the submission, neither the award is invalid nor the arbitrators are guilty of misconduct if they do not publish the award. •

Q. 30. Whether stating of reasons in award is obligatory?

Ans. Unless (a) the parties have agreed that no reasons have to be given, or (b) the award is an arbitral award on agreed terms U/S. 30 of the New Act, the award should state the reasons in support of the determination of liability or non-liability. •

Q. 31. Whether registration of an award is necessary ?

Ans. Registration of Award : An award given under the Arbitration Act, requires registration U/S. 17 (1) (b) of the Registration Act, if the award affects partition of an immovable property exceeding the value of Rs. 100. •

Q. 32. What are the principles governing the award of interest?

Ans. Principles Governing Award of Interest : The legal position relating to the power of the arbitrator to award of interest is : (1) If there is no reference regarding the claim of interest either expressly or impliedly, the arbitrator has no power to award interest. (2) If there is a reference relating to the claim of interest, the arbitrator can award interest from the date of reference till the date of award or upto the date of decree. (3) The arbitrator has no power to award interest after the date of the decree and the Court alone is competent to award interest after the date of the decree. (4) The Court has no power to award interest from the date of award till the date of decree or from the date of suit till the date of the decree as the same is impliedly prohibited by S. 31(7) and the arbitrator alone is entitled to do so by virtue of reference. •

Q. 33. Explain the power of the arbitrator to award cost.

Ans. According to S. 31 (8), unless the arbitration agreement expresses a contrary intention, an arbitrator has full discretion as to the costs of the reference. The costs of the reference include all the expenses properly incurred by the parties in the course of whole inquiry before the arbitrator. They may include the costs of negotiating and settling the terms of the submission and of fresh submission between the parties. •

Q. 34. When will arbitral proceedings be terminated?

Ans. According to S. 32 (1), the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal U/Sub-Sec. (2). (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where : (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute; (b) the parties agree on the termination of the proceedings; (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible. (3) Subject to S. 33 and S. 34 (4), the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings. •

Q. 35. What do you mean by the correction and interpretation of award or additional award?

Ans. S. 33 enables the arbitral tribunal to discharge the following three functions after the termination of its mandate U/5.32 : (i) making correction in the award, (ii) giving an interpretation of a specific point or part of the award; and (iii) making an additional award. •

Q. 36. When can an arbitral award be set aside by the court?

Ans. According to S. 34 (2), an arbitral award maybe set aside by the court on the application of a party on any one of the following grounds : (i) that party was under some incapacity; or (ii) that the arbitration agreement is not valid under the law; or (iii) that the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present his case; or (iv) that the arbitral award deals with-a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; or (v) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; or (vi) that the court finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force; or (vii) that the arbitral award is in conflict with public policy of India. •

Q. 37. What are the general duties of arbitral tribunal?

Ans. The duties of Arbitral Tribunal are : (i) Not to exceed jurisdiction; (ii) Not to exceed power; (iii) To act judicially; (iv) Confidentiality of the Controversy; (v) To take its own decision and (vi) To act fairly and justly. •

Q. 38. When can the court remit the award to the arbitral tribunal for reconsideration?

Ans. U/S. 34 (4) the court is empowered to remit the award for reconsideration on any of the following grounds : (i) Where the award has left undetermined any of the matters referred to arbitration; or (ii) Where the arbitrator or umpire determines any matter not referred to arbitration which he cannot be severed without affecting the determination of the matter referred; or (iii) Where the award is so indefinite that it is impossible to execute; or (iv) Where the legality of the award is questionable. •

Q. 39. Whether the court is empowered to set aside the award, if so, on what grounds?

Ans. Yes. It is a well-settled principle of law that the award of the arbitrator, who is a chosen judge of facts and of law, between the parties, cannot be set aside unless the error is apparent on the face of the award or from the award it can be inferred that the arbitrator has misconducted himself or the proceedings, or that he has not applied his mind to the material facts. •

Q. 40. What are the consequences of an award being set aside?

Ans. In the consequence of an award being, set aside, the award cannot as to their right in the subject-matter of the dispute. In case only a part of the award is enforceable by law and the parties will be relegated to their former positions. If a part of the award is set aside and that part is severable from the rest of the award, the valid part may be kept intact as binding between the parties. The setting aside of an award does not affect the arbitration agreement in any way and it remains operative. •

Q. 41. When will the arbitral award be final?

Ans. S. 35 provides the time when the arbitral award will be final and binding on the parties. "Subject to this Part" means that the award becomes final and binding on the parties when the time stipulated U/S. 34(3), has expired. On the application of any party to the arbitration, the Court may either set aside the award or dismiss the challenge to the award. •

Q. 42. When Award operates as res-judicata?

Ans. Award Operating as Res-judicata : The Calcutta High Court has held that although Order 2, Rule 2 of the Code of Civil Procedure, does not apply in terms to the proceedings of the Arbitration Act, yet there is no reason why the principles thereof should not be applied to arbitration proceedings in appropriate cases. •

Q. 43. When and how an award be enforced?

Ans. According to S. 36, where the time for making an application to set aside the arbitral award U/S. 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. •

Q. 44. What orders are appealable?

Ans. According to S. 37(1)(a), an appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the court passing the order, namely : (a) granting or refusing to grant any interim measure U/S. 9. (b) setting aside or refusing to set aside an arbitral award U/S. 34. (2) An appeal shall also lie to a court from an order of the arbitral tribunal : (a) accepting the plea referred to in Sub-Sec. (2) or Sub-Sec. (3) of S. 16; or (b) granting or refusing to grant an interim measure U/S. 17 •

Q. 45. Whether a party has a right to appeal in Supreme Court?

Ans. Right to appeal in Supreme Court : Where the question for decision of the Court was whether the award should or should not be made a rule of the court, the value of the entire property dealt with by the award, and not the value of any share in the total assets, is the criterion for judging the valuation of the suit and proposed appeal to the Supreme Court. •

Q. 46. Can there be revision or review of an award?

Ans. Revision or Review of an Award : There is nothing in S. 37 which in any way takes away the powers that the High Court possesses of entertaining petition of revision or review U/S. 115 of the Civil Procedure Code. Hence, a revision petition against an order passed on appeal under this section is competent. •

Q. 47. Who is empowered to fix the amount of deposit?

Ans. According to S. 38 (1), the arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in Sub-Sec. (8) of S. 31, which it expects will be incurred in respect of the claim submitted to it : Provided that where, apart from the claim, a counter claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter claim. •

Q. 48. What is the remedy if one party fails to pay fees?

Ans. The call for deposit of amount as fixed by the arbitral tribunal keeping in view the magnitude of the work, shall be made in equal shares by the parties in advance. If either party expresses inability to pay or refuses to pay his share of the deposit, it is now permissible for the other party to pay the share of the defaulting party and the arbitral tribunal shall debit the amount, after determination of the costs U/S. 31(8), at the time of making award. •

Q. 49. Whether arbitral tribunal is obliged to give rendition of accounts?

Ans. The deposits made by the parties as per the call given by the arbitral tribunal is subject to rendition of accounts by the arbitral tribunal. This account shall be given upon termination of the arbitral proceedings i.e., between the time when the arbitral proceedings are concluded with the consent of the parties and the making of the award, that the arbitral tribunal shall render the accounts to the parties of the deposits received. •

Q. 50. Whether an arbitrator may not file award till fees paid?

Ans. An applicant cannot have the award filed unless he pays off the balance of the fees due to the arbitrators. The Arbitration Act does not provide that if any of the parties does not pay his share of the arbitrator's fees, the Court has power to compel him to do so by means of an interim order, at the instance of another party who has paid his share and wants to have the award filed. •

Q. 51. Whether an arbitration agreement be discharged by the death of the party there to?

Ans. According to S. 40 (1), an arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased. •

Q. 52. Whether the mandate of arbitrator is terminated on the death of any party?

Ans. The language of S. 40(2) is quite plain and simple and does not seem to be open to two interpretations. The mandate of arbitrator does not terminate on the death of any party. •

Q. 53. What do you mean by the exclusive territorial jurisdiction of the Court?

Ans. According to S. 42, notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect of an arbitration agreement any application under this Part, has been made in a court, that court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court. •

Q. 54. Whether the Limitation Act, 1963 shall apply to arbitrations as it applies to the proceedings in the court?

Ans. S. 43(1) lays down that the arbitral proceedings are equated to court proceedings. Accordingly, all the provisions of the Limitation Act, 1963, shall apply to arbitrations as it applies to the proceedings of the Court. The Arbitrator should himself decide the question of limitation, if there is any. •

Q. 55. What is the distinction between foreign and domestic award?

Ans. A "foreign award" is an award which has any of the following elements : (i) in which one of the parties is a national of foreign country; or (ii) the subject-matter of arbitration agreement is international in character. That it deals with international commerce, trade or investment etc.; or (iii) the award is made in a foreign country. On the other hand, a "domestic award" is one which does not have any of the aforesaid foreign elements or characteristics. •

Q. 56. What is the meaning of the term commercial?

Ans. 00Meaning of the Term, "Commercial". : In Renusagar Power Company Ltd. Vs. General Electrical Co. Ltd. AIR 1985 S.C. 1156 Supreme Court has held that while construing the expression "commercial", it has to be borne in mind that the Act is calculated and designed to sub serve the cause of facilitating international trade and promoting the same by providing for speedy settlement of disputes arising in such trade through arbitration and any expression or phrase occurring therein should receive, consistent with literal and grammatical sense, a liberal construction. •

Q. 57. Whether judicial authority is empowered to refer parties to arbitration?

Ans. Yes. S. 45 says that notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to S. 44, shall, at the request of one of the parties or any party claiming under through or under him, refer the parties to an arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed. •

Q. 58. When is a foreign award binding?

Ans. S. 46 says that any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defense, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award. •

Q. 59. What conditions must be satisfied for the enforcement of foreign award?

Ans. S. 48 (1) says that the enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if the party furnishes to the court proof that : (a) the parties to the agreement referred to in S. 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters submitted to arbitration may be enforced, or (d) the composition of the arbitral authority or the arbitral procedure was

not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place; or (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. •

Q. 60. When can the enforcement of an arbitral award may be refused by the court?

Ans. S. 48 (2) says that the enforcement of an arbitral award may also be refused if the court finds that : (a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or (b) the enforcement of the award would be contrary to the public policy of India. •

Q. 61. When can the foreign award be enforced?

Ans. The conditions for the enforcement of foreign awards have been described U/S. 47 and 48 of this Act. If these conditions are fulfilled to the satisfaction of the court, then the award is deemed to be the decree of that court according to the provisions of S. 49 of this Act. •

Q. 62. Whether an appeal lies against the order of a court refusing (i) to refer the parties to the arbitration U/S. 85; and (ii) to enforce a foreign award U/S. 48?

Ans. S. 50 (1) says that an appeal shall lie from the order refusing to : (a) refer the parties to the arbitration U/S. 85; (b) enforce a foreign award U/S. 48 to the court authorized by law to hear appeals from such order. •

Q. 63. When is an award not considered as "foreign award"?

Ans. It has been held that where the parties have not stated in the arbitration agreement as to the law which would govern the award, then the judge has to determine the proper law for the parties in such circumstances by putting himself in the place of a reasonable men. •

Q. 64. Whether judicial authority is empowered to refer parties to arbitration?

Ans. Yes. The judicial authority is empowered to refer parties to arbitration if the following conditions are satisfied : (i) That there must be a dispute regarding a contract made between persons to whom S. 54 applies; (ii) That the arbitration agreement must be included in that contract; (iii) That a party to the arbitration agreement must commence legal proceedings against another party thereto; (iv) That the judicial authority has to be satisfied that the agreement or the arbitration can proceed and is operative; (v) That the judicial authority has to be satisfied that the arbitration agreement is valid U/S. 53 of the Act, and is capable of being carried into effect. •

Q. 65. When is a foreign award binding?

Ans. An award is treated to be binding when the following two conditions are fulfilled : (i) The award has been regularly made; and (ii) When it has complied with the formalities required for the making of arbitral award. •

Q. 66. Whether the validity of foreign award can be challenged on the ground that it is against the provisions of the foreign law or Indian law or the public policy of India?

Ans. Validity of Award cannot be Challenged : It has been held that where the arbitration agreement was a valid agreement under the law governing it and the award itself is final in the foreign country in which it was made, it cannot be condemned as bad or invalid merely because the arbitrator in proceeding to make the award, contravened the provisions of the Act, which Act does not apply in the foreign country. The validity of the award cannot be affected invoking any law of India or the public policy of India. •

Q. 67. To what types of disputes Part III of Conciliation apply?

Ans. S. 61 (1) says that save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship. •

Q. 68. To what types of disputes Part III of conciliation does not apply?

Ans. S. 61 (2) says that Part III of conciliation shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation. •

Q. 69. What is the role of conciliator?

Ans. S. 67(1) says that : the' conciliator shall assist the parties in independent and impartial manner in their attempt to reach an amicable settlement of their dispute. (2) The conciliator shall be guided by the principles of objectivity, fairness and justice, giving due consideration to. among other things, the rights and obligations of the parties, the usages of trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties; (3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and a need for a speedy settlement of the dispute. (4) The conciliator may, at any stage of the conciliation proceedings, make proposals for settlement of the dispute. Such proposal need not be in writing and need not be accompanied by a statement of the reasons therefore.

Q. 70. What do you mean by administrative assistance?

Ans. S. 68 says that in order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person •

Q. 71. What is the nature of co-operation of the parties made available to the Conciliator?

Ans. S. 71 provides that the parties shall in good faith co-operate with the conciliator and, in particular, shall endeavor to comply with requests made by the conciliator to submit written materials, provide evidence and attend meetings. •

Q. 72. What do you mean by the settlement agreement?

Ans. According to S. 73(1) when it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may formulate the terms of a possible settlement in the light of such observations. (2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement. (3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. (4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties. •

Q. 73. What is the status and effect of settlement agreement?

Ans. S. 74 provides that the settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal U/S. 30.

Q. 74. When shall the conciliation proceedings be terminated?

Ans. S. 76 says that the conciliation proceedings shall be terminated : (a) by the signing of the settlement agreement by the parties on the date of agreement; or (b) by a written declaration of the conciliator, after consultation with the

parties, to the effect that further efforts at conciliation are no longer justified, on the date of declaration; or (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or (d) by a written declaration of a party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration. •

Q. 75. Under what circumstances resort to arbitral or judicial proceedings be taken during the conciliation proceedings?

Ans. According to S. 77, parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights. •

Q. 76. Whether High Court is empowered to make rules?

Ans. S. 82 enables the High Courts to frame rules as to the filing of the awards and all proceedings consequential or incidental thereto. Such rules, when made, would have effect of a statute. •

Q. 77. Whether Central Govt. is authorized to make rules for carrying out the provisions of this Act?

Ans. According to S. 84(1), the Central Government has been authorized to make rules for giving effect to the provisions of this Act by making notification in the Official Gazette. U/S. 83(2), it has been made mandatory on 'the part of the Central Government to place before each House of the Parliament a set of rules framed for giving effect to the provisions of this Act. A copy of the rules framed by the Central Government shall be laid before each House of parliament, while it is in session, for its consideration. •

Q. 78. What systems are recognised in India as Alternate Dispute resolution Systems?

Ans. Arbitration, conciliation negotiation and mediation are the main systems which are treated as alternative dispute resolution systems and are - me-recognized in all the democratic countries of the world. Besides these, Adalat is quite prevalent in India an ADR system. •

Q. 79. What is the nature of ADR systems?

Ans. The ADR systems are extra-judicial in nature. They can be used a.:1 contentious matters which may be resolved through agreement between -at parties. Good results of settlement have been found through ADR in several types of disputes like civil, commercial, industrial and disputes. •

Q. 80. What are the advantages of ADR systems ?

Ans. Advantages of ADR Systems are : (i) It can be used at any time through a case is pending in the court; (ii) It can be used to reduce the number c.f. contentious issues between the parties; (iii) It can be used to provide expeditious and better solution of disputes at lesser cost of litigation; (iv) It provides in keeping the dispute private matter.; (v) It is flexible and not affected by the rigorous rules of procedure and; (vi) It reduces the work load of the court. •

Q. 81. Explain the classification of ADR systems.

Ans. Classification of ADR Systems is (1) Negotiation; (ii) Conciliation/Mediation; (iii) MEDOLA; (iv) Mini-trial; and (v) Arbitration and Lok Adalat. •

Q. 82. What is the 'Negotiation' ?

Ans. Meaning of Negotiation:— It is a non-binding system in which discussions between the parties are initiated without the intervention of a third party for arriving at a settlement of the dispute, •

Q. 83. What is Conciliation ?

Ans. Meaning of Conciliation/Mediation :—Conciliation is interchangeably described as mediation. A non-binding procedure is adopted in conciliation and an impartial third party called the conciliator/mediator assists the parties in reaching at an amicable settlement of the dispute with utmost satisfaction. In conciliation, the conciliator hears both the parties and learns their points of view. Thereafter the conciliator puts forth his suggestions before the parties keeping in view their attitude and interest. •

Q. 84. What is the MEDOLA ?

Ans. MEDOLA:—It is a procedure which is used if the parties fail to reach an agreement through mediation. A neutral person either the mediator or the arbitrator selects the negotiated offers of the parties. Such selection is binding on the parties. •

Q. 85. What is Mini-trial ?

Ans. Mini-trial:—It is a non-binding procedure in which the summaries of the disputing parties are presented to enable them to assess the strengths, weaknesses and prospects of their cases. The neutral advisor assists the parties in reaching at a negotiated settlement.

Q. 86. What is Arbitration ? •

Ans. Meaning of Arbitration:—It is a procedure in which the dispute is submitted to an arbitral tribunal which makes an award in respect of the dispute . The award is binding on the parties.

Q. 87. What is Lok Adalat ? •

Ans. Meaning of Lok-Adalat:—Besides above noted ADR systems, Lok-Adalats are quite prevalent in India. A Lok-Adalat is a people's court. It is a forum where voluntary efforts are aimed at to bring settlement of disputes between the parties through conciliatory and persuasive methods . This procedure provides speedy and less expensive justice in both the rural and the urban areas. It is quite useful for the weaker sections of the society because it is cheap and less cumbersome . The members of the Lok-Adalat who act as conciliators, are generally the retired judicial officers, social workers and the 'advocates. These Adalats are managed by both the Central and State Government.

Q. 88. What is ICADR ? •

Ans. Eminent persons in the fields of law, administration and commerce came together and established an institution known as, "The International Centre for Alternative Dispute Resolution", i.e. ICADR . This institution was established on 31st may , 1995 at Delhi . This centre is intended to spread the ADR systems in the country for the settlement of public disputes.

Q. 89. What are the main objectives of ICADR ? •

Ans. The Main Objectives of ICADR are:— (i) To propagate, promote and popularize the settlement of domestic and international disputes by different modes of ADR. (ii) To provide facilities and administrative and other support services for holding conciliation, mediation, mini-trials and arbitration proceedings. (iii) To promote reform in the system of settlement of disputes and its healthy development suitable to the social, economic and other needs of the community. (iv) To appoint conciliators, mediators, arbitrators, etc. when so required by the parties. •

Q. 90. What provisions of the Constitution guarantee the equal justice and free legal aid to poor ?

Ans. In State of Maharashtra Vs. Manu Bhai Bagaji Vashi, (1995) 5 S.C.0 730 it has been held that the right to free legal aid and speedy trial are guaranteed fundamental rights under Art. 21 of the Constitution. Art. 39-A provides for "equal justice" and "free legal aid". The State shall secure that the operation of the legal system promotes justice. It means justice according to law. The principle underlined under Article 39-A casts a duty on the State to secure that the operation of legal system promotes justice on the basis of equal opportunity and mandates to provide free legal aid in any way-by legislation or otherwise so that justice is not denied to any citizen by reason of economic or other disabilities. •

Q.91. How Lok-Adalat is organized ?

Ans. Organization of Lok-Adalats:—S. 19 of the Legal Services Authority Act, 1987 provides that the State or District Authorities may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas, as they think fit. Every Lok Adalat organized for an area shall consist of such judicial officers of the area as may be specified by the State or District Authorities organizing the Lok Adalats and such other members possessing such qualifications and experience as may be prescribed by the State Government. •

Q. 92. Who is entitled to Legal Services ?

Ans. S. 13 of Legal Services Authority Act, 1987 provides that persons \*no satisfy all or any of the criteria specified in S. 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend. An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this 1 Act unless the concerned Authority has reasons to disbelieve such affidavit. •

Q. 93. What are the powers of Lok Adalat ?

Ans. S. 22 of the Act provides that while trying a suit in respect of the following matters, namely:— (a) The summoning and enforcing the attendance of any witness and examining him on oath. (b) The discovery and production of any document. (c) The reception of evidence on affidavits. (d) The requisitioning of any court or office: and (e) Such other matters as may be prescribed. •

Q.94. What do you mean by the award of Lok Adalat ?

Ans. Award of Lok Adalat :—S. 21 of the Legal Authority Act, 1987, provides that every award of the Lok Adalat shall be deemed to be a decree of a civil court or order of any court or tribunal and where a compromise or settlement has been arrived at, by a Lok Adalat in a suit or proceeding transferred to it under Sub-Sec. (1) of S. 20, the court fee paid in such suit or proceeding shall be refunded in the manner provided under the Court Fees r Act, 1870. •

Q. 95. How is the National Legal Services Authority is constituted?

Ans. Constitution of the National Legal Services Authority:—S. 3 of Legal Services Authority Act, 1987, provides that the Central Government constitute a body called the National Legal Services Authority to exercise the powers and perform the functions conferred on a Central Authority under this Act. The Central Authority shall consist of— (a) The Chief Justice of India who shall be the Patron-in-Chief. (b) A serving or retired Judge of the 5 Supreme Court, nominated by the president , in consultation with the Chief Justice of India, who shall be the Executive Chairman; and (c) Such other members, possessing such experience and qualifications as may be prescribed and nominated by the Central Government. •

Q. 96. How State Legal Authority is constituted ?

Ans. S. 6 of Legal Services Authority Act, 1987 provides that every State Government shall constitute a Legal Services Authority for the State to exercise the powers and perform the functions conferred on a State Authority under this Act. A State Authority shall consist of— (a) The Chief Justice of the High Court or any other serving or retired judge of the High Court nominated by the Governor in consultation with the Chief Justice, who shall be the Chairman of the State Authority ; and (b) Such other members, possessing such experience and qualifications as may be prescribed and nominated by the State Government. •

Q. 97. How District Legal Authority is constituted .

Ans. Constitution of District Legal Authority:— S. 9 of the Legal Services Authority Act, 1987 lays down that every State Government shall constitute a Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on the District Authority under this Act. A District Authority shall consist of—(a) The District Judge, who shall be its Chairman; and (b) Such other members possessing such qualifications and experience as may be prescribed and nominated by that Government. The State Government shall also appoint one of the members of the District Authority as the Secretary of that Authority. •

Q. 98. What are the functions of District Authority ?

Ans. Functions of the District Authority:— S. 10 of the Legal Services Authority Act, 1987 provides that it shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority . Without prejudice to the generality of the functions referred to in Sub-Sec. (1), the District Authority may perform all or any of the following functions, namely:—(a) Co-ordinate of activities of legal services in the District.(b) Organise Lok Adalat within the District and (c) Perform such other functions as the State Authority may, in consultation with the State Government , fix by regulations. •

Q. 99. How conciliation officers are appointed under the Industrial Disputes Act, 1947 ?

Ans. Appointment of Conciliation Officers:—The Appropriate Government may, by notification in the Official Gazette appoint as many persons as it may think proper to mediate in and promote settlement of industrial disputes . Such an officer may be appointed for a particular area. It is a voluntary process to arrive at a compromise. For this purpose the Government may appoint conciliation officers U/S. 4 of the Industrial Disputes Act, 1947. •

Q. 100. What are the duties of conciliation officers ?

Ans. Duties of Conciliation Officer:—The following are the duties of Conciliation Officer U/S. 12 of the Act — (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice U/S. 22 has been given, shall hold conciliation proceedings in the prescribed manner. (2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. •

Q.101. What are the powers of Conciliation Officer under the Industrial Disputes Act, 1947 ?

Ans. Powers of Conciliation Officer:— S. 11 of the Act prescribes the powers of the conciliation officers as under:—A conciliation officer may, for the purpose of enquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates. A conciliation officer may call for any document which he has ground for considering to be relevant to the industrial dispute, or necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act and for the aforesaid purpose, the conciliation officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of compelling of the production of documents. •